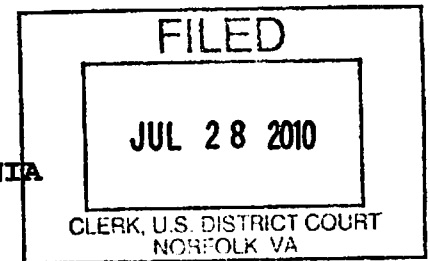


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



KENNETH EDWARD BARBOUR, #323278,
Petitioner,

ACTION NO. 2:09cv302

v.
GENE M. JOHNSON, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to Petitioner's conviction in the Circuit Court of Arlington County, Virginia.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the magistrate judge was filed on June 21, 2010, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On July 1, 2010, the Court received Petitioner's Objection. (Doc. No. 23.) The Court received no response from Respondent.

The majority of Petitioner's Objection was unintelligible. The Court discerns only one objection to the merits of the magistrate judge's report and recommendation. Specifically,

Petitioner states that he has demonstrated cause that excuses his claims from being procedurally defaulted. Petitioner does not allege facts that constitute cause, but rather he summarily states that cause exists.

In his report and recommendation, the magistrate judge addressed the limited exceptions to procedural default and found that "Barbour failed to establish the requisite cause for his failure to comply with the applicable state procedural rules." The Court agrees, and Barbour has not alleged facts in his Objection that change the Court's analysis. Accordingly, Petitioner's objection is OVERRULED.

The Court, having reviewed the record and examined the objections filed by Petitioner to the magistrate judge's report, and having made de novo findings with respect to the portions objected to, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on June 21, 2010, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED as the petition is procedurally defaulted. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of

entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.


Mark S. Davis
United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

July 28, 2010